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13 Attorneys for Plaintiff
 14 UNITED STATES OF AMERICA

15 UNITED STATES DISTRICT COURT

16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 ARLAN WESLEY HARRELL, et al.,

21 Defendants.

No. CR 17-404(A)-AB-1 & 2

[PROPOSED] ORDER CONTINUING
 TRIAL DATE AND FINDINGS REGARDING
 EXCLUDABLE TIME PERIODS PURSUANT
 TO SPEEDY TRIAL ACT

NEW TRIAL DATE: 08-11-2020

MILS: 07-09-2020

Opps: 07-23-2020

FPTC: 07-30-2020

25 Having heard from plaintiff, the United States of America, by
 26 and through its counsel of record, Assistant United States Attorney
 27 Devon Myers, Department of Justice Trial Attorney Lauren S.
 28 Kupersmith, and defendant Wesley Arlan Harrell ("defendant

1 Harrell"), both individually and by and through his counsel of
2 record, Deputy Federal Public Defender Kim Savo, and defendant John
3 Brinson, Jr. ("defendant Brinson"), both individually and by and
4 through his counsel of record, Gregory Nicolaysen, at a status
5 conference held before this Court on January 24, 2020, and good
6 cause appearing, the Court hereby FINDS AS FOLLOWS:

7 1. The indictment in this case, which charged only defendant
8 Harrell, was filed on June 27, 2017. Defendant Harrell first
9 appeared before a judicial officer of the court in which the charges
10 in this case are pending on May 30, 2017. The Speedy Trial Act, 18
11 U.S.C. § 3161, originally required that the trial commence against
12 defendant Harrell on or before September 5, 2017.

13 2. On July 28, 2017, the first superseding indictment in this
14 case was filed, charging defendant Harrell, defendant Brinson
15 (collectively, "defendants"), and two others for whom the trial date
16 has been vacated. Defendant Brinson first appeared before a
17 judicial officer of the court in which the charges in this case are
18 pending on July 21, 2017. The Speedy Trial Act, 18 U.S.C. § 3161,
19 originally required that the trial commence against defendant
20 Brinson on or before October 6, 2017.

21 3. The Court initially set trial dates of August 29, 2017,
22 for defendant Harrell, and October 3, 2017, for defendant Brinson
23 (collectively, the "Original Trial Dates").

24 4. Defendants are detained pending trial. The parties
25 estimate that the trial in this matter will last approximately two
26 weeks. Defendants are joined for trial and a severance has not been
27 granted.

1 5. On July 28, 2017, a federal grand jury returned a First
2 Superseding Indictment charging defendants with 15 counts including
3 engaging in a child exploitation enterprise, in violation of 18
4 U.S.C. § 2252A(g), which carries a mandatory minimum term of
5 imprisonment of 20 years and a statutory maximum sentence of life
6 imprisonment and numerous counts of production of child pornography.
7 Defendant Harrell was also charged with obtaining a minor for
8 purposes of engaging in sexually explicit conduct, in violation of
9 18 U.S.C. § 2251A(b)(1), which carries a 30-year mandatory minimum
10 sentence. The government has informed defendants that it will
11 likely supersede the indictment to capture additional criminal
12 violations discovered after the First Superseding Indictment was
13 filed since the case is proceeding to trial and it is important to
14 hold defendants accountable for the full scope of their criminal
15 conduct.

16 6. The government has produced more than 82,000 pages of
17 discovery to the defense. Discovery in this case includes numerous
18 audio and video recordings, investigative reports, financial and
19 cellular telephone records, and forensic reports. The government
20 has produced more than 49 gigabytes of discovery. Additionally, the
21 government has made available for review at a government facility
22 the extraction results and the finalized forensic reports, which
23 contain child pornography and, therefore, cannot be produced. The
24 discovery in this case also includes sensitive and private
25 information of child victims/witnesses, which is subject to the
26 privacy protections of 18 U.S.C. § 3509(d), as well as discovery
27 related to ongoing investigations. Accordingly, the Court entered a
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1 protective order to prevent the unauthorized dissemination,
2 distribution, or use of materials containing the sensitive
3 information. The government has segregated all of the protected
4 discovery, which includes law enforcement reports, redacted forensic
5 materials, and audio and video recordings of interviews, marked
6 these materials as being produced pursuant to protective order, and
7 has produced these materials along with the other discovery. The
8 protected discovery in this case is voluminous. For example, there
9 are over 20 identified victims in this case; those who are verbal
10 have been forensically interviewed. The video recordings of these
11 interviews span many hours, with just one victim/witness interview
12 typically running several hours. There are a small number of
13 Reports of Investigation outstanding as well as documents the
14 government typically produces at the time of trial, which it is
15 reviewing and hoping to produce in advance of trial.

16 7. The Court has previously continued the trial date in this
17 case from the Original Trial Dates to March 3, 2020, and found the
18 interim period to be excluded in computing the time within which the
19 trial must commence, pursuant to the Speedy Trial Act.

20 8. On January 24, 2020, this Court held a status conference.
21 Defendants appeared in person with their counsel of record. Upon
22 the request of defendants through counsel, the Court continued the
23 trial date from March 3, 2020, to August 11, 2020. This Order
24 supplements that findings and orders made by the Court at that
25 conference.

26 9. Due to the nature of the prosecution, including the
27 charges in the indictment and the voluminous discovery produced to
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1 defendants, this case is so unusual and so complex that it is
2 unreasonable to expect adequate preparation for pretrial proceedings
3 or for the trial itself within the Speedy Trial Act time limits.

4 10. On January 7, 2020, defendant Harrell's current counsel
5 substituted in as counsel of record. Defense counsel for defendant
6 Harrell is schedule to be in the following trials/events:

- 7 • United States v. Kowalczyk, cr. No. 18-825-PSG, possession
8 with intent to distribute narcotics, 2 to 3 day trial, set
9 for February 25, 2020.
- 10 • United States v. Godfree, Cr. No. 19-242-JAK, mail theft
11 and aggravated identity theft, 3 to 4 day trial, set for
12 March 3, 2020.
- 13 • United States v. Tucker, Cr. No. 19-497-VAP, counterfeit
14 securities, 1 to 2 day trial, set for March 3, 2020.
- 15 • United States v. Chavol, Cr. No. 572(A)-JFW, narcotics
16 distribution and conspiracy, 2 to 3 day trial, set for
17 March 10, 2020.
- 18 • United States v. Hanna, 19-CR-691-AB, conspiracy to
19 defraud the United States, three day trial, set for April
20 7, 2020.
- 21 • United States v. Olivera, 19-cr-528-CJC, conspiracy to
22 defraud the United States and medicare fraud, estimated to
23 last one week, set for April 7, 2020.
- 24 • Teaching seminar on April 23-24.
- 25 • United States v. Madi, 18-CR-846-PSG, narcotics conspiracy
26 and death resulting, estimated to last four days, set for
27 May 12, 2020.

- United States v. Cardenas, 19-CR-510-CAS, narcotics distribution and conspiracy, estimated to last three days, set for June 16, 2020.

Accordingly, counsel for defendant Harrell will not have the time that she believes is necessary to prepare to try this case on the current trial date. Additionally, defense counsel for defendant Harrell has a direct conflict with the current trial date and cannot be available. Notably, because counsel for defendant Harrell recently substituted as counsel, she also has to become familiar with the voluminous discovery, which is the primary reason that defendants sought a continuance here and the primary reason the Court granted the request to continue the trial date.

11. Counsel for defendant Brinson is scheduled to be in the following trials:

- United States v. Sumlin, 18-CR-473-CAS, firearms trial, estimated to last two to three days, set for February 11, 2020.
- United States v. Merejil, et al., 18-CR-774, narcotics conspiracy, estimated to last one week, set for March 3, 2020.
- United States v. Chavez-Gastellum, et al., 17-CR-432, narcotics conspiracy and money laundering case, estimated to last one to two weeks, set for March 10, 2020.
- United States v. Garza, et al., 16-CR-684, narcotics conspiracy, estimated to last one week, set for March 10, 2020.

- 1 • United States v. Chiu, et al., 19-CR-393(A)-JAK, narcotics
2 conspiracy, estimated to last one week, set for March 17,
3 2020.
- 4 • United States v. Landa-Rodriguez, et al., a 70 defendant
5 RICO and narcotics conspiracy case, estimated to last four
6 to six weeks, set for March 30, 2020.
- 7 • United States v. Iro, et al., 19-CR-380, a money
8 laundering conspiracy, estimated to last one week, set for
9 April 14, 2020.
- 10 • United States v. Landeros-Cisneros, et al., 19-CR-609, a
11 narcotics and money laundering case, estimated to last one
12 week, set for trial on April 28, 2020.
- 13 • United States v. Williams, et al., 19-CR-427-VAP, a
14 narcotics conspiracy case, estimated to last one to two
15 weeks, set for April 28, 2020.
- 16 • United States v. Laredo, et al., 18-CR-892-AB, a twenty-
17 six defendant RICO case, estimated to last two to three
18 weeks, set for trial on May 19, 2020.
- 19 • United States v. Alvarez-Caro, et al., 19-CR-362-AB, a
20 narcotics conspiracy case, estimated to last one week, set
21 for trial on July 28, 2020.

22 Accordingly, counsel for defendant Brinson will not have the time
23 that he believes is necessary to prepare to try this case on the
24 current trial date. Additionally, because defense counsel for
25 defendant Brinson has a direct conflict with the current trial date,
26 he will not be available to try the case on the current trial date.

1 12. In light of the foregoing, counsel for defendants need
2 additional time to confer with defendants, conduct and complete an
3 independent investigation of the case, conduct and complete
4 additional legal research including for potential pre-trial motions,
5 review the discovery and potential evidence in the case, and prepare
6 for trial given that a pretrial resolution is highly unlikely to
7 occur.

8 13. On August 2, 2019, defendant Brinson filed a motion to
9 suppress his post-arrest statements. On August 9, 2019, defendant
10 Harrell filed a motion to suppress his post-arrest statements. On
11 August 12, 2019, defendant Brinson filed a motion to suppress
12 evidence seized from his vehicle on the day of this arrest. On
13 August 22, 2019, defendant Harrell filed a motion to suppress
14 evidence seized from his residence as well as his person, and a
15 motion to sever. On October 17, 2019, after a hearing, the Court
16 denied defendant Harrell's and defendant Brinson's motions.

17 14. Defendants' counsel has conferred with defendants
18 regarding defendants' rights under the Speedy Trial Act. In
19 addition, the Court inquired of defendant Harrell and defendant
20 Brinson in open court regarding their Speedy Trial Act rights. Each
21 defendant stated that he understands his rights under the Speedy
22 Trial Act and that he knowingly and voluntarily waives those rights
23 and agrees to the trial schedule included in this Order. Defendants
24 further believe that failure to grant the continuance will deny them
25 continuity of counsel and adequate representation.

26 15. The government objects to the continuance given that the
27 case is more than two years post-indictment and the victims have the
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1 right for the case to proceed to trial promptly. That said, the
2 government also recognizes that counsel for defendant Harrell must
3 have time to become familiar with the voluminous discovery.

4 16. The continuance is not based on congestion of the Court's
5 calendar, lack of diligent preparation on the part of the attorney
6 for the government or the defense, or failure on the part of the
7 attorney for the Government to obtain available witnesses.

8 17. The ends of justice served by the continuance outweigh the
9 best interest of the public and defendant in a speedy trial.

10 18. Failure to grant the continuance would be likely to make a
11 continuation of the proceeding impossible, or result in a
12 miscarriage of justice.

13 19. The case is so unusual and so complex, due to the nature
14 of the prosecution and the existence of novel questions of fact or
15 law, that it is unreasonable to expect preparation for pre-trial
16 proceedings or for the trial itself within the time limits
17 established by the Speedy Trial Act.

18 20. Failure to grant the continuance would unreasonably deny
19 defendant continuity of counsel and would deny defense counsel the
20 reasonable time necessary for effective preparation, taking into
21 account the exercise of due diligence.

22 Accordingly, the Court finds that there are facts that support
23 a continuance of the trial date in this matter, and good cause for a
24 finding of excludable time pursuant to the Speedy Trial Act, 18
25 U.S.C. § 3161.

26 THEREFORE, FOR GOOD CAUSE SHOWN:
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1 1. The trial in this matter is continued from March 3, 2020,
2 to August 11, 2020. The final pretrial conference is continued to
3 July 30, 2020. The briefing schedule for any motions in limine
4 shall be: motions filed on July 9, 2020, and oppositions filed on
5 July 23, 2020.

6 2. The time period of March 3, 2020, to August 11, 2020,
7 inclusive, is excluded in computing the time within which the trial
8 must commence, pursuant to 18 U.S.C. §§ 3161(h)(7)(A), (h)(7)(B)(i),
9 (h)(7)(B)(ii), (B)(iv), and (h)(1)(D).

10 3. Nothing in this Order shall preclude a finding that other
11 provisions of the Speedy Trial Act dictate that additional time
12 periods are excluded from the period within which trial must
13 commence. Moreover, the same provisions and/or other provisions of
14 the Speedy Trial Act may in the future authorize the exclusion of
15 additional time periods from the period within which trial must
16 commence.

17 IT IS SO ORDERED.

18
19 _____
20 DATE

HONORABLE ANDRÉ BIROTTE, JR.
UNITED STATES DISTRICT JUDGE

21 Presented by:

22 /s/

23 DEVON MYERS
Assistant United States Attorney